

CHAPTER 6

Professionalism

Your success does not always depend on just your legal acumen; your reputation is equally critical. In fact, how you conduct yourself can overshadow your performance. Abusing office privileges or passing out drunk under a table at the firm holiday party will tell the partners that you lack one of the most fundamental skills in the practice of law: judgment.

A. At the Office

1. Breaks/Visiting

Logically, partners view associates that they observe roaming the halls excessively or spending too much time chatting with colleagues as underworked. This is true even in a small firm's friendly, collegiate environment. The partners hired you to bill, not socialize. Limit your breaks or

visits to colleagues, including lunch breaks; associates do not often get the benefit of a lunch “hour.” Whatever you do, do not repeatedly visit with a particular member of the opposite sex, even if you are only good friends. Fair or not, people unfortunately will assume the worst. False rumors will spread and might reach the partners’ ears. They will undoubtedly question your judgment, which could prove fatal to your career. Do yourself a favor and preserve your reputation.

2. Personal Calls

There is a well-known cartoon depicting two guys in a dungeon, one chained to the wall and the other on a rack. One of the guys says, “That’s the last time I make a personal call on company time.”

Every office has its own policy about personal calls. More often than not, we are tempted to push the limits of that policy. The problem in a small firm, though, is that you are much more visible and audible. More likely than not, the walls are thin and a supervisor sits directly adjacent to you. No matter how relaxed the firm’s culture might be, the partner wants you billing, not chatting on her time.

Generally, if you limit the number of calls you make and receive, you will encounter little difficulty. We all need to make a few personal calls. But if you are regularly making long personal calls on work time, your workload and your commitment will be questioned, and your performance will be more closely scrutinized.

TRUE STORY: A partner in a small firm had the ability to pick up an associate’s phone without the associate knowing. One day, when a paralegal was in the partner’s office, the partner said, “Let’s see who the associate is talking to.” He put the phone on speaker, picked up, and both the partner and the paralegal listened to the associate talking to his wife about certain activities in which they would engage once the [expletive] partner released the prisoners for the evening.

Avoid talking about sensitive and overly personal topics. You would think that this goes without saying, but it is astonish-

ing how often someone who has dedicated three or four years to intense legal study cannot grasp this fundamental concept.

Frankly, in this age of mobile communication, you would have to be a complete dolt to risk your job by discussing personal matters in the office. Go to a private spot or outside the building to conduct your personal affairs. And speaking of cell phones, turn down your ring tone in the office. While Jay-Z might sound great to your buddies when you are in a bar on a Saturday night, it is doubtful that your supervisors will find your hipster musical choices entertaining.

Finally, never put a personal call before a client call unless it is a matter of life and death. If you put a client on hold or, worse, tell the client you will call back, while you continue a non-essential personal call and a partner overhears, you have just cast major doubt on your competence and common sense.

3. Gossiping (Warning: Be Leery of Pot-Stirrers!)

Who doesn't love to gossip? There is, however, a distinction between listening to gossip and *being* a gossip!

While it might go against everything you have been told, pay attention to gossip. The grapevine is a valuable source of information about the goings-on in the firm. For example, an associate in a small firm learned that the partners were interviewing his replacement. He was able to beat the partners to the punch by quickly landing a position with a new firm without agonizing over how he would explain why he had been let go from his prior firm (and he was able to enjoy the partners' expressions when he gave notice!).

Be wary of gossip-mongers. A pot-stirrer might have his own agenda or might be merely expressing an opinion. Moreover, do not repeat negative gossip. While you need to be in the loop, you do not want to lose credi-

bility. That associate who learned that the partners were interviewing to replace him? The partners figured out that another associate, who happened to overhear them talking, gave the head's-up. The firm was soon interviewing for a second associate!

Gossip is particularly poisonous and destructive in a small firm. If people spend a lot of time undermining each other's reputations, it can tear the entire office apart. On the other hand, passing along good information is constructive. You might ease colleagues' concerns about the health of the practice or about their performance.

When it comes to gossip, the bottom line is this: Keep your ears open and your mouth shut.

4. Computer Use (Games, Internet, Email)

As an attorney, you should know that you have no expectation of privacy with respect to work email. Do not be deluded into thinking your employer will not track your Internet usage. If a partner suspects you are not being as productive as you should be, she will examine your computer's "cookies," those digital breadcrumbs that detail what computer sites you visit during the course of the day. There is nothing wrong with checking your fantasy baseball or football stats for a few minutes early in the morning or later in the day. But if a partner catches you viewing an inappropriate website or demonstrating an addiction to web sudoku, your reputation will be tarnished. And whatever you do, do not compound the problem by billing for the time you spend surfing or playing.

TRUE STORY: An Of Counsel attorney sent a firm-wide email on his 25th anniversary with the firm. The founding partner, an aging gentleman, responded with kind words, congratulating the attorney for embodying the firm's commitment and spirit. A new associate, thinking he was forwarding the email to a friend, instead replied to that partner saying, "See what I mean about the old guy?" The associate promptly received a phone call from the partner saying, "I don't get it." While it was meant to be a compliment, it took a lot of explaining and unearthing of other emails (which led to other questions) before the situation was defused.

Like phone use, limit and censor your personal emails. The partners can read every email you send if they so choose. Look, many of us love raunchy jokes. Sometimes, though, a buddy might inadvertently send something outrageous to your work email account that will either remain on your hard-drive for your employer to discover or accidentally be forwarded to the wrong person. Use your judgment and tell your friends to send personal emails to your personal account.

Just assume always that Big Brother is watching, or at the very least, has the capability of watching. Monitor your emails and site visits, and avoid all content that you do not want your employer to know about.

5. Social Functions

Remember that even at a social event, your supervisors are still evaluating you. Thus, there are two “musts” for firm events: (1) you must attend; and (2) you must not embarrass yourself or others.

Social functions provide a casual atmosphere for enhancing relationships with your colleagues. Do not blow off important work social functions; at the very least, “pop in” for a short while early in the event. By attending, you demonstrate your interest in the firm and show your supervisors how you interact with other people. Getting to know partners might pay large dividends down the road. Those partners could end up assigning you to high-profile cases or being big supporters as you make your partnership push.

Social interaction is important as you progress in your career, as it is often a large part of recruiting clients. Given a choice between two equally competent attorneys, the client will always retain the attorney with whom she is most comfortable. Therefore, firm social functions are good indicators to supervisors about their associates’ future rainmaking abilities. Social functions also allow you to evaluate whether the firm is the right fit for you.

While attending firm social functions can enhance your career, inappropriate behavior can torpedo it. This might seem intuitive, but it bears mention because we have all heard the horror stories about associates who have treated firm events like frat parties. You are under the microscope, and anything you say or do can and will be used against you. Do not use an office event to demonstrate your drinking or eating prowess. That is not to say that you should be a teetotaler. But know your limits and remember that moderation is key.

Although you need to conduct yourself appropriately, you should try to relax enough to let your personality shine. You do not want to put on your “work façade,” since this is likely to make you seem like dull company. The partners want to meet a real person, not a cardboard cutout, so do not talk about work. But also do not say anything that will embarrass you or the person with whom you are speaking. Focus on current events, although make sure that if you are discussing politics, you do so only with someone who shares the same views. In a small firm, you should be able to find out your supervisors’ interests; read up on those areas before you attend a social event. Your supervisor will be impressed by your initiative and will be thrilled to talk about her favorite topics.

6. Use of Vacation and Sick Time

Believe it or not, you are allowed to use your vacation and/or sick time. You are not, however, allowed to abuse it. If you work in a small firm, it is essential that you plan a vacation as far in advance as possible and give the partner ample notice. Nothing will irk your employer more than scrambling at the last minute to cover a court appearance or to finish an assignment because you have sprung a trip on her at the last minute.

If you have small children, you might need to take time off to address medical issues or to attend a school function. Rather than taking off the entire day, see if you can either remotely access your desktop or use the

time to contact clients. Your employer will not only view you as committed to your work, but able to balance multiple challenges effectively.

B. In the Courtroom

You might have already discovered this, but court proceedings are not as dramatic and judges are not the loud curmudgeons that they appear to be on television. Most firms will let you get your feet wet by limiting your initial court appearances to routine applications, likely where no objection has been interposed, or status conferences. In a small firm, however, you might not have that luxury: Baptism by fire might be your lot. Either way, you will have butterflies fluttering in your stomach until you open your mouth and enter your appearance.

One point that nobody ever tells you: The debtor (and debtor's counsel) sits at the right-hand counsel table!

1. Interactions with the Judge

When speaking to judges, ALWAYS be respectful and deferential. Even if the judge screams or tinges her words with sarcasm, do not become disrespectful. The judge can, and will, sanction you for improper conduct in the courtroom! Do not question the judge's judgment. No matter the outcome of

TRUE STORY: At a hearing on a chapter 13 creditor's application to file an untimely proof of claim, the chapter 13 trustee stood up and raised a tangential issue. The judge realized that the debtor might have committed perjury at his § 341 meeting of creditors. He immediately directed the trustee to file a motion to dismiss and for the debtor to appear at the hearing on the motion. The judge was not happy and let the entire courtroom know. The attorney said, "I will make sure the debtor appears, Your Honor, and I thank you for your time." No less than four different attorneys who were present in the courtroom approached debtor's counsel and commented on how well the attorney handled the curveball and remained nonetheless respectful.

the hearing, always thank the judge — again, you are showing respect for her position.

TRUE STORY: An attorney appeared at a hearing that was previously adjourned because of a conflicting state court appearance. Rather than considering the application, the judge was out for blood: Apparently, the attorney called chambers and his adversary the day of the scheduled appearance. The court decided to investigate and discovered that the state court appearance had been scheduled at least two weeks prior. The judge sanctioned the attorney \$100 for failing to timely request the adjournment in writing.

Particularly if you work in a small firm with a heavy consumer debtor practice, you might have appearances scheduled at the same time before different judges in the same courthouse. The best way to handle this is, on the day before, see where your case falls on the respective judges' calendars. After determining which case will likely be called first, check in with the courtroom deputies for the other judges, explain the situation and ask that those cases be put over for second call. The deputy will advise the judge when your case is called. If you are unable to appear for a reason that is outside of your control, inform the court and your adversary as soon as possible, preferably in writing.

A good tip is to ask around the office and get prior feedback about particular judges. Inquire about the judge's demeanor, how the judge likes matters presented or the judge's pet peeves. Getting friendly with the judge's staff members, who can provide additional insight into the judge's likes or dislikes, is equally beneficial.

2. Interactions with Opposing Counsel

When dealing with opposing counsel, always be civil and professional. Just because the attorney on the other side is your "adversary,"

TRUE STORY: A chapter 7 trustee asked for documents that might not have been necessary. The attorney thought that the chapter 7 trustee was bullying him and, for the sport of it, refused to provide the documents. In response, the chapter 7 trustee decided to conduct a more intensive investigation and filed an application for a Rule 2004 examination. During the examination, a different attorney was handling the matter and was more gracious and forthcoming. The chapter 7 trustee commented, "If I had just gotten this cooperation at the beginning, I would not have suspected that you guys were hiding something. This case could have been closed months ago." The furious client refused to pay a portion of the legal fees.

you do not have to be a gladiator. Be collegial and accommodating. Otherwise, you might undermine your professional reputation and hinder progress in your case. You never know when you will need a professional favor down the road, which you will not get if you act like a jerk.⁵

3. Demeanor/Body Language

No matter how many moot court competitions you have competed in, you will not be prepared for that first moment in court. When you do, remember this commercial admonition: “Never let them see you sweat!” Always exude confidence, no matter how nervous you might feel, even if it means faking it. Act as if you have appeared in court a million times. Stand up straight at the podium, look the judge in the eye and speak in a steady, normal-paced voice. Have a little cheat sheet in front of you to keep yourself focused. By showing confidence, your client and adversary will view you as competent, and the judge might give you the benefit on a close question.

If the judge irritates you, remain composed. Take a deep breath. If the judge seems to not grasp your arguments, politely and respectfully reframe your position. If the judge asks a question for which you are not prepared, or worse, do not know the answer to, make an educated guess.

TRUE STORY: At a hearing on a motion to dismiss, the judge expressed reservations about a chapter 13 debtor’s credibility with respect to the issues that were part of a pre-bankruptcy state court action. The judge asked the attorney, who had been practicing for a few short months, whether dismissal or conversion to a chapter 7 was more appropriate. Unsure, but wishing to save the case, the attorney alternatively suggested that the creditor apply to lift the stay to allow the state court action to move forward so that the credibility issues could be resolved by a jury. Although the judge ended up dismissing the case, the attorney avoided the pitfall question and sounded reasonable and knowledgeable.

5 One excellent resource for proper courtroom decorum is ABI’s *Report on Standards of Professional Courtesy and Conduct*, available at materials.abi.org/sites/default/files/2013/Sep/Report_on_Standards_of_Professional_Conduct.pdf.